

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TARZ MITCHELL,
 #63139

Plaintiff,

vs.

HOWARD SKOLNIK, *et al.*,

Defendants.

2:10-cv-01339-JCM-GWF

ORDER

Presently before the court is *pro se* plaintiff Tarz Mitchell's motion to amend/correct complaint. (Doc. #36). Plaintiff attached a copy of his proposed amended complaint to the motion. (Doc. #36, Ex. 1). Defendants Brian Williams, et. al. filed an opposition. (Doc. #38). Plaintiff did not file a reply.

Plaintiff's proposed amended complaint asserts two new claims and adds three new defendants. (Doc. #36, Ex. 1). First, plaintiff's new count III is a claim for retaliation against defendant Cheryl Burson from October 10, 2011, to January 13, 2012. (Doc. #36, Ex. 1). Second, plaintiff's new count IV is a claim for supervisory liability and failure to train. (Doc. #36, Ex. 1). Finally, plaintiff adds Nevada Governor Brian Sandoval, Nevada Secretary of State Ross Miller, and Nevada Attorney General Catherine Cortez Masto as defendants for their alleged role in count IV of the proposed amended complaint. (Doc. #36, Ex. 1).

1 Defendants oppose this motion, arguing that amendment is futile. (Doc. #38). Specifically,
2 defendants assert that count III of the proposed amended complaint is subsumed within count II of the
3 existing complaint because the factual allegations in count III are part of the same cause of action as
4 count II. (Doc. #38). Further, defendants argue that count IV fails to state a claim upon which relief can
5 be granted because the three new defendants, in their role as members of the Board of Prison
6 Commissioners, have no statutory duty to train Nevada Department of Correction employees. (Doc.
7 #38).

8 Pursuant to Federal Rule of Civil Procedure 15(a), leave to amend “shall be freely given when
9 justice so requires.” Absent a showing of an “apparent reason” such as undue delay, bad faith, dilatory
10 motive, prejudice to the defendants, futility of the amendments, or repeated failure to cure deficiencies
11 in the complaint by prior amendment, it is an abuse of discretion for a district court to refuse to grant
12 leave to amend a complaint. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir.
13 1989). The local rules of federal practice in the District of Nevada require that a plaintiff submit a
14 proposed amended complaint along with the motion to amend. LR 15-1(a).

15 While counts two and three of the proposed amended complaint are both retaliation claims, the
16 factual allegations in these claims are distinct. Count two asserts that defendants retaliated against
17 plaintiff when plaintiff filed prison grievances. The factual allegations in this count revolve around
18 work- and education-related retaliation. Count three asserts that defendants retaliated against plaintiff
19 when plaintiff filed the instant case. Here, plaintiff asserts that defendants eventually placed plaintiff
20 in administrative segregation in retaliation for filing this lawsuit. (Doc. #36, Ex. 1). Leave to amend
21 “shall be freely given,” and the court finds that amendment is appropriate in this case. FED. R. CIV. P.
22 15(a).

23 However, the court finds that plaintiff’s proposed count IV is futile. Pursuant to NRS 209.111,
24 the functions of the Board of Prison Commissioners are limited to: (1) purchasing materials and tools
25 necessary for any institution or facility of the Nevada Department of Corrections, (2) regulating the
26 number of officers and employees of the Nevada Department of Corrections, and (3) prescribing

1 regulations for carrying on the business of the Board and the Nevada Department of Corrections. NRS
2 209.111. Therefore, the allegations in the proposed amended complaint are not sufficient to make it
3 plausible that Nevada Governor Brian Sandoval, Nevada Secretary of State Ross Miller, and Nevada
4 Attorney General Catherine Cortez Masto would have any duty to train Nevada Department of
5 Corrections employees.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that *pro se* plaintiff Tarz Mitchell's
8 motion to amend/correct complaint (doc. #36) be, and the same hereby is, GRANTED.

9 IT IS FURTHER ORDERED that, after deleting count IV of the proposed amended complaint,
10 plaintiff file his amended complaint with the court within 14 days of entry of this order. Failure to file
11 an amended complaint may result in sanctions, including dismissal of the instant case.

12 DATED May 4, 2012.

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15 UNITED STATES DISTRICT JUDGE
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